

89-639

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Supreme Court, U.S.
FILED

AUG 29 1989

JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

NATIONAL FUNERAL SERVICES, INC.

Petitioner,

v.

JOHN D. ROCKEFELLER, ET AL

Respondent.

APPENDIX

BOOK I
Pages A1 - A122

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124pp



United States Constitution Article One

**Section 8, Clause 1. Powers of Congress;
Levy of Taxes for Common Defense and General
Welfare; Uniformity of Taxation**

The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

United States Constitution Article One

Section 8, Clause 2. Borrowing Money

To borrow Money on the credit of the United States;

United States Constitution Article One

Section 8, Clause 3. Regulation of Commerce

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;



United States Constitution Article Six

Section 1, Clause 2. Supreme Law of Land

This constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

United States Constitution Bill of Rights

Article I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.



United States Constitution Bill of Rights

Article V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces; or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution Bill of Rights

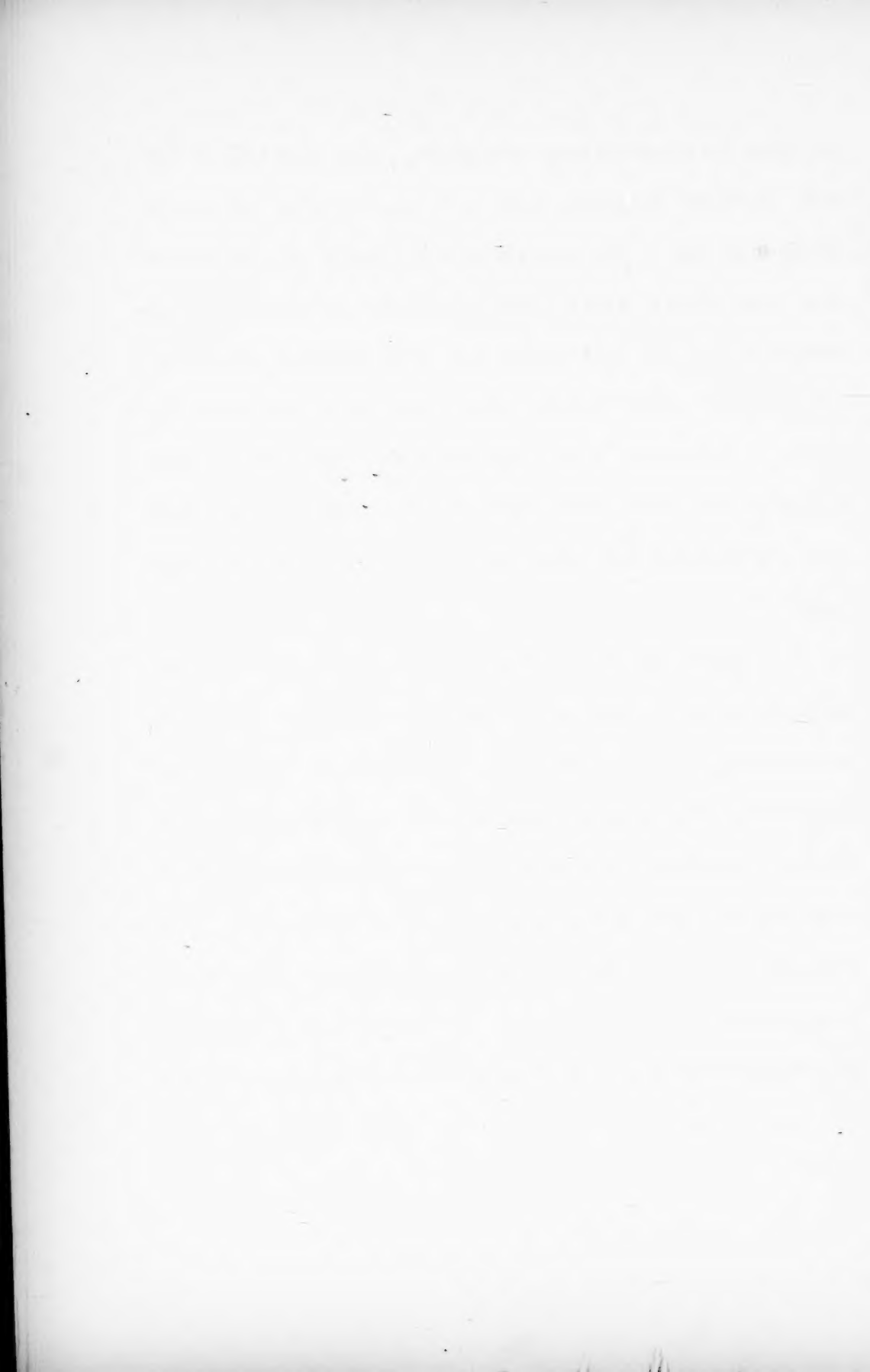
Article XIV

Section 1. All persons born or naturalized in the United States, and subject



to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive



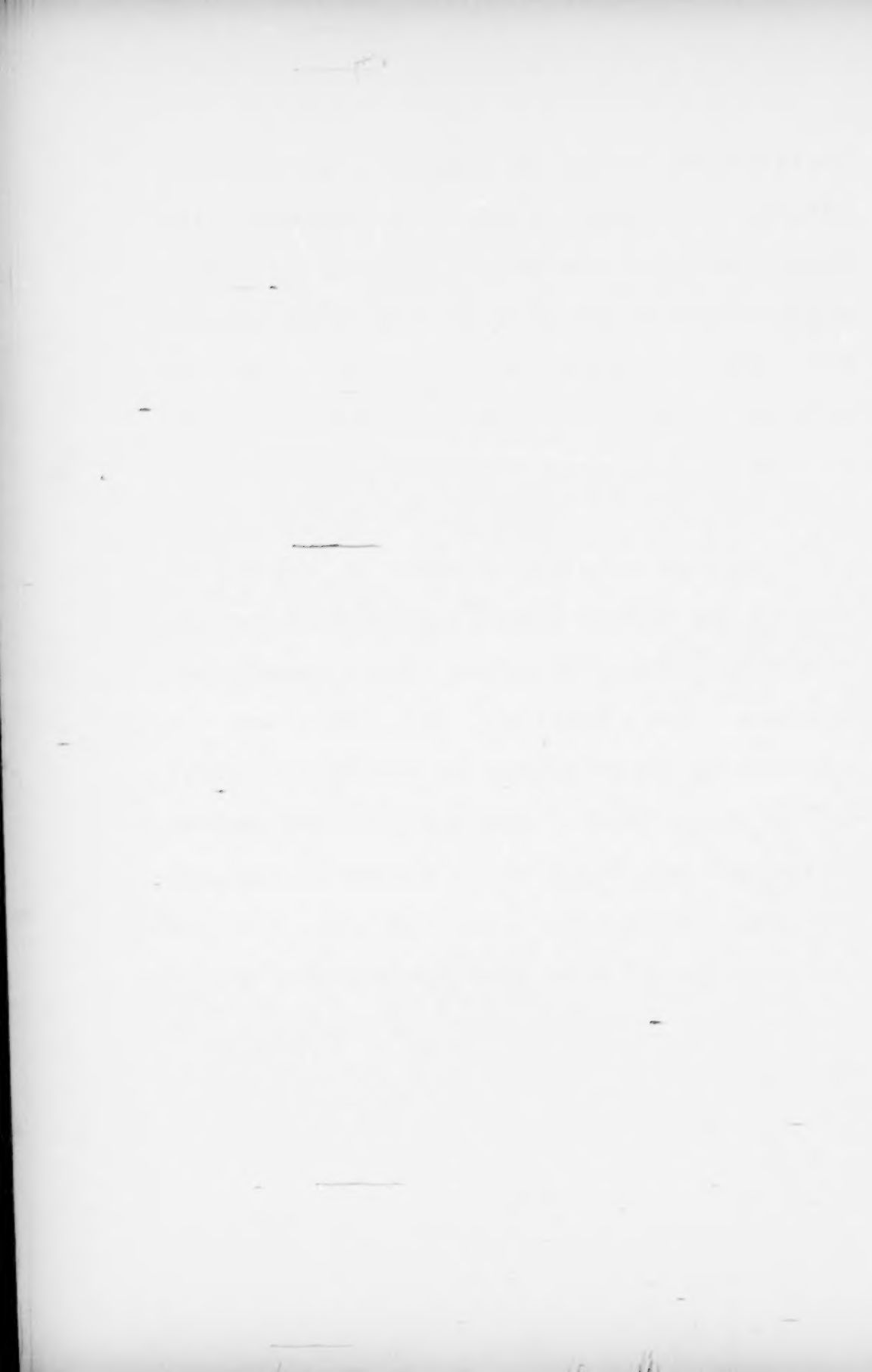
and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State



legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such



debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

28 U.S.C. § 1291. Final decisions of
district courts

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. June 25, 1948, c. 646, 62 Stat. 929; Oct. 31, 1951, c. 655, § 48, 65 Stat. 726; July 7, 1958, Pub. L. 85-508, § 12(e), 72 Stat. 348.



**28 U.S.C. § 1332. Diversity of citizenship;
amount in controversy; costs**

→(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs, and is between ---

(1) citizens of different States;

(2) citizens of a State, and foreign states or citizens or subjects thereof; and

(3) citizens of different States and in which foreign states or citizens or subjects thereof are additional parties.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of



\$10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business: Provided further, That in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and



of the State where it has its principal place of business.

(d) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico, June 25, 1948, c. 646, 62 Stat. 930; July 26, 1956, c. 740, 70 Stat. 658; July 25, 1958, Pub.L. 85-554, § 2, 72 Stat. 415; Aug. 14, 1964, Pub.L. 88-439, § 1, 78 Stat. 445.

28 U.S.C. § 1343. Civil rights and elective franchise.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person.

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done



in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

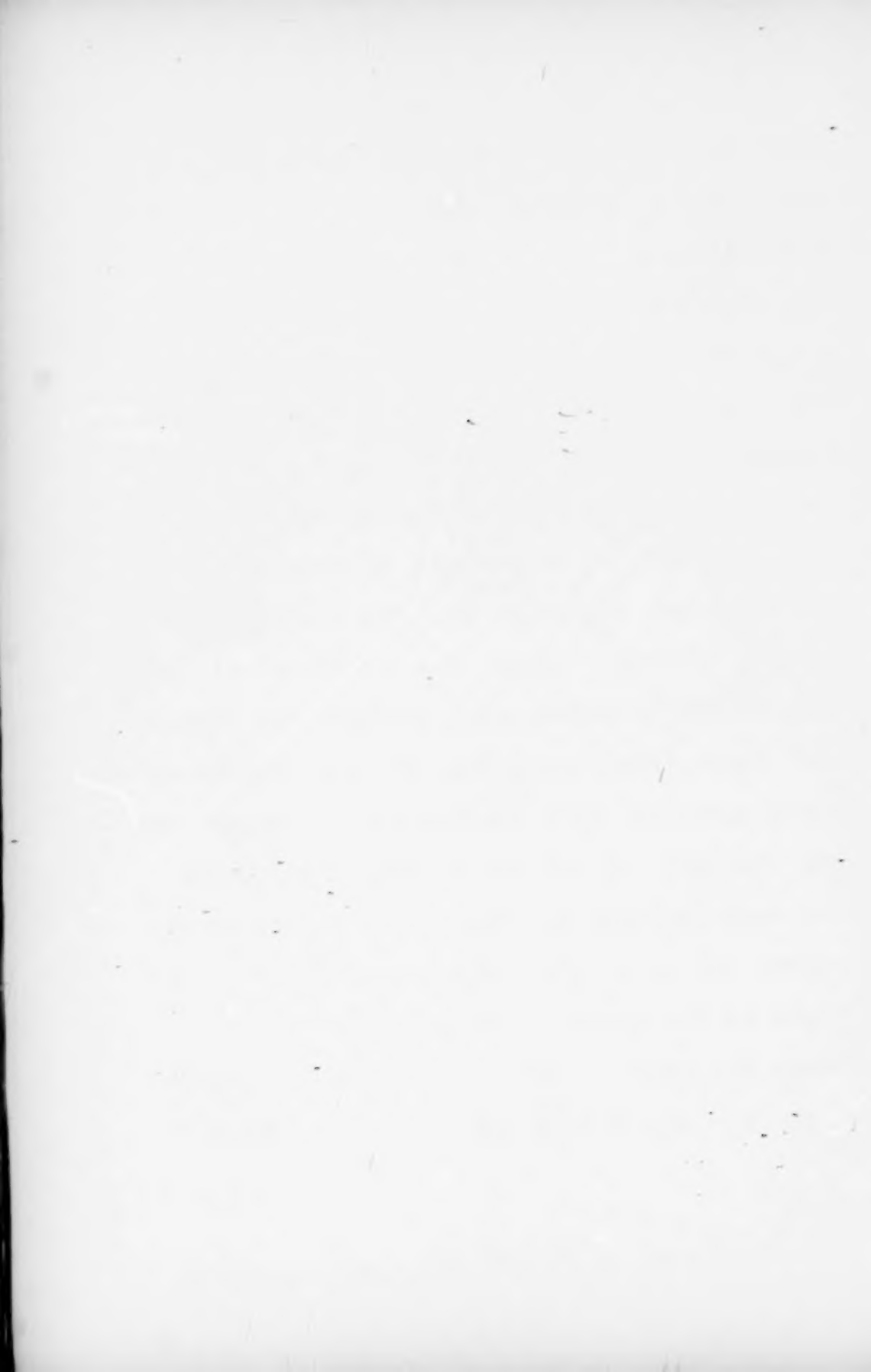
June 25, 1948, c. 646, 62 Stat. 932; Sept. 3,

1954, c. 1263, § 42, 68 Stat. 1241; Sept. 9, 1957, Pub.L. 85-315, Part III, § 121, 71 Stat. 637.

28 U.S.C. § 2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or 1146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(June 25, 1948, c. 646, 62 Stat. 964; May 24, 1949, c. 139, § 111, 63 Stat. 105; Aug. 28,



1954, c. 1033, 68 Stat. 890; July 7, 1958, Pub.L. 85-508, § 12(p), 72 Stat. 349; Oct. 4, 1976, Pub.L. 94-455, Title XIII, § 1306(b)(8), 90 Stat. 1719; Nov. 6, 1978, Pub.L. 95-598, Title II, § 249. 92 Stat. 2672.)

United States Constitution Title 15 Ch. 2

**§ 45. Unfair methods of competition
unlawful; prevention by Commission -
Declaration of unlawfulness; power to
prohibit unfair practices**

(a) (1) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful.

(2) Nothing contained in this section or in any of the Antitrust Acts shall render unlawful any contracts or agreements prescribing minimum or stipulated prices, or requiring a vendee to enter into contracts or agreements prescribing minimum or stipulated



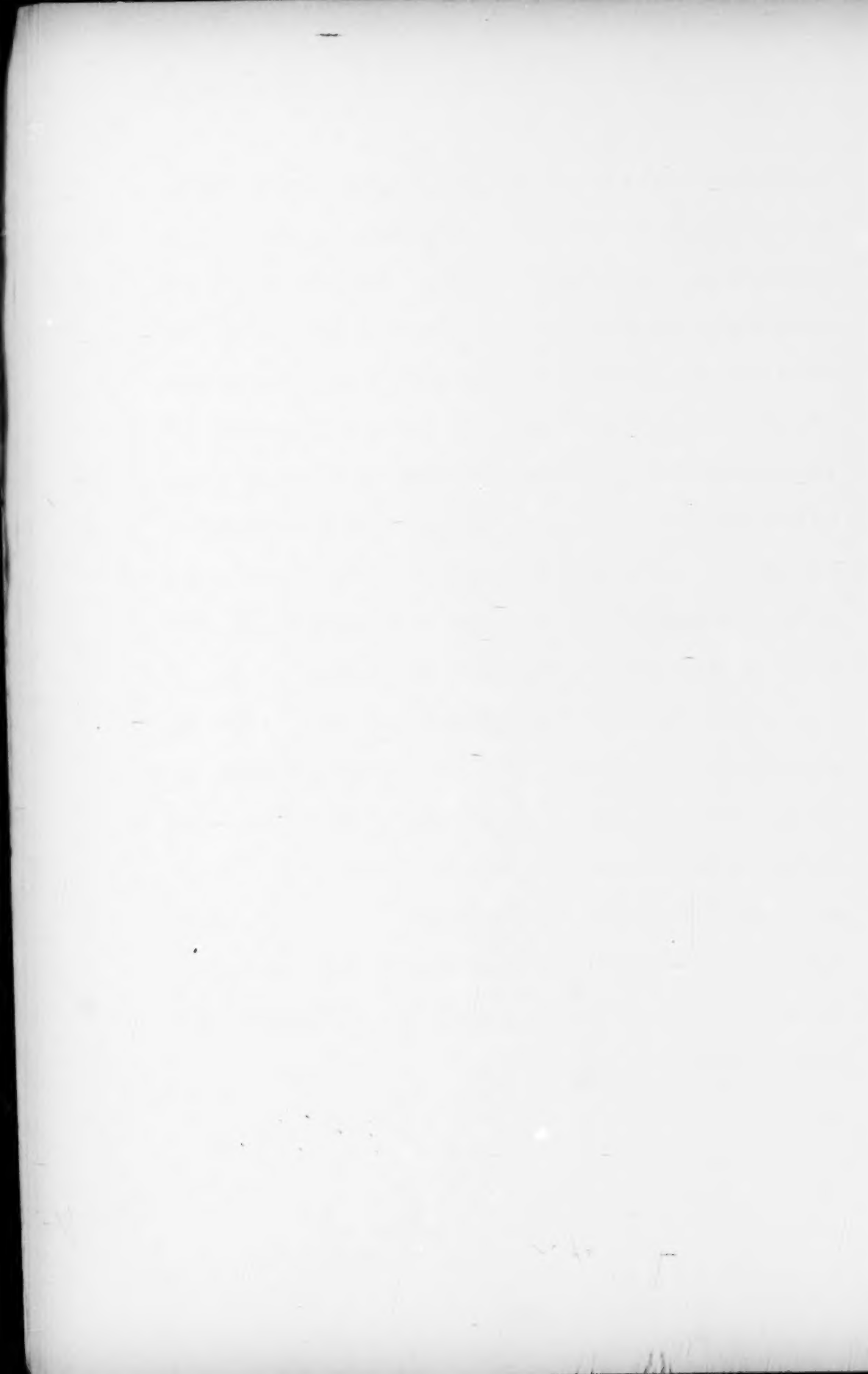
prices, for the resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale.

(3) Nothing contained in this section or in any of the Antitrust Acts shall render unlawful the exercise or the enforcement of any right or right of action created by any statute, law, or public policy now or



hereafter in effect in any State, Territory, or the District of Columbia, which in substance provides that willfully and knowingly advertising, offering for sale, or selling any commodity at less than the price or prices prescribed in such contracts or agreements whether the person so advertising, offering for sale, or selling is or is not a party to such a contract or agreement, is unfair competition and is actionable at the suit of any person damaged thereby.

(4) Neither the making of contracts or agreements as described in paragraph (2) of this subsection, nor the exercise or enforcement of any right or right of action as described in paragraph (3) of this subsection shall constitute an unlawful burden or restraint upon, or interference with, commerce.



(5) Nothing contained in paragraph (2) of this subsection shall make lawful contracts or agreements providing for the establishment or maintenance of minimum or stipulated resale prices on any commodity referred to in paragraph (2) of this subsection, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other.

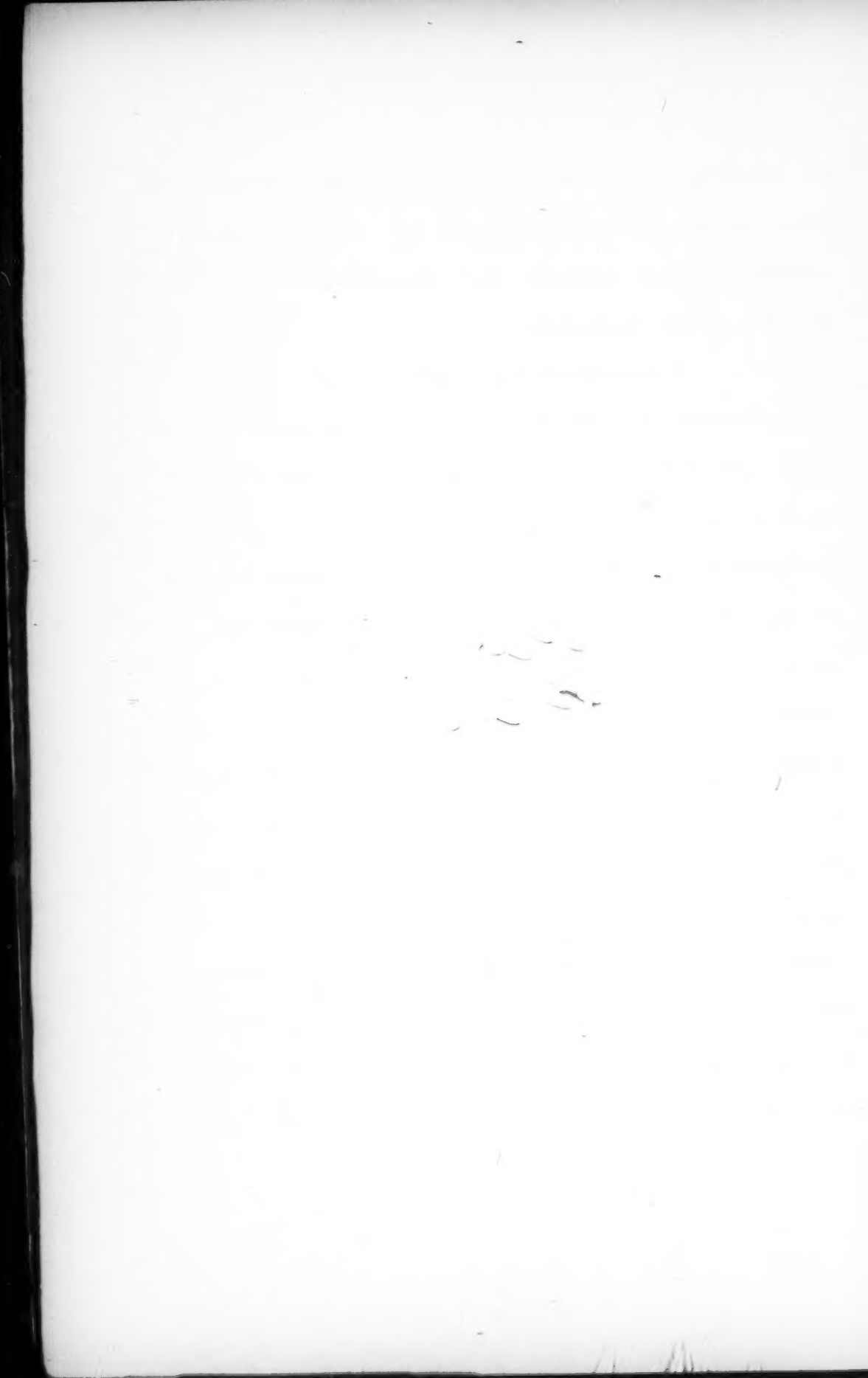
(6) The Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except



as provided in section 406(b) of said Act, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

**Proceeding by Commission;
modifying and setting aside orders**

(b) Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said



complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by sections 41 to 46 and 47 to 58 of this title, it shall make a report in writing in which it



shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition

has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require: Provided however, That the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section.

Review of order; rehearing

(c) Any person, partnership, or corporation required by an order of the



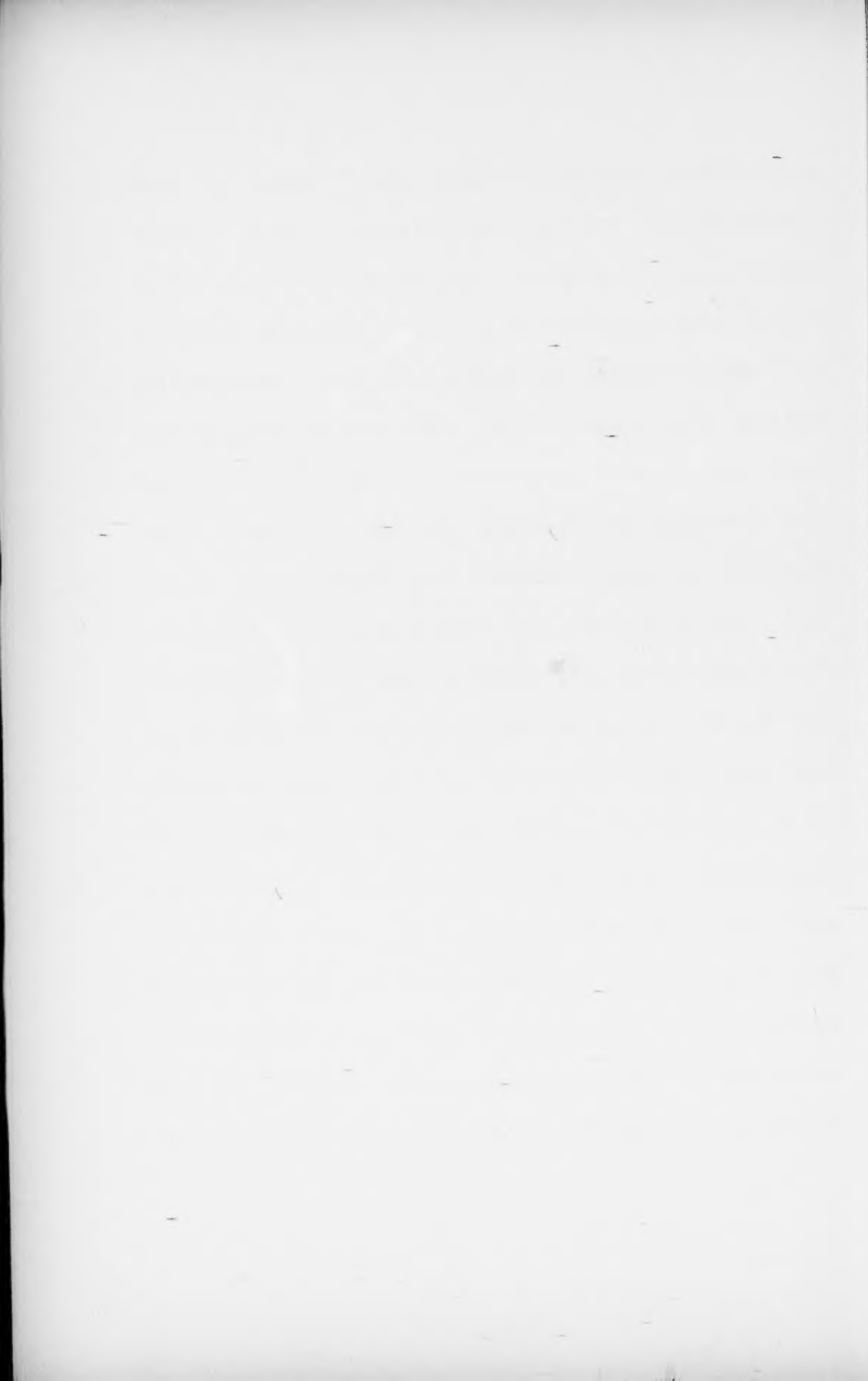
Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of Title 28. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently



with the Commission until the filing of the record and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission until the filing of the record and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission. If either party shall apply to the court for leave to adduce



additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same



shall be subject to review by the Supreme Court upon certiorari, as provided in section 347 of Title 28.

Jurisdiction of court

(d) Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.

Precedence of proceedings; exemption from liability

(e) Such proceedings in the court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the Commission or judgment of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.



**Service of complaints, orders and
other Processes; return**

(f) Complaints, orders, and other processes of the Commission under this section may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership, or corporation; or (c) by mailing a copy thereof by registered mail or by certified mail addressed to such person, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other



process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered mail or by certified mail as aforesaid shall be proof of the service of the same.

Finality of order

(g) An order of the Commission to cease and desist shall become final --

(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the Commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b); or

(2) Upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been



affirmed, or the petition for review dismissed by the court of appeals, and no petition for certiorari has been duly filed; or

(3) Upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by the court of appeals; or

(4) Upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Commission be affirmed or the petition for review dismissed.

Same; order modified or set aside by

Supreme Court

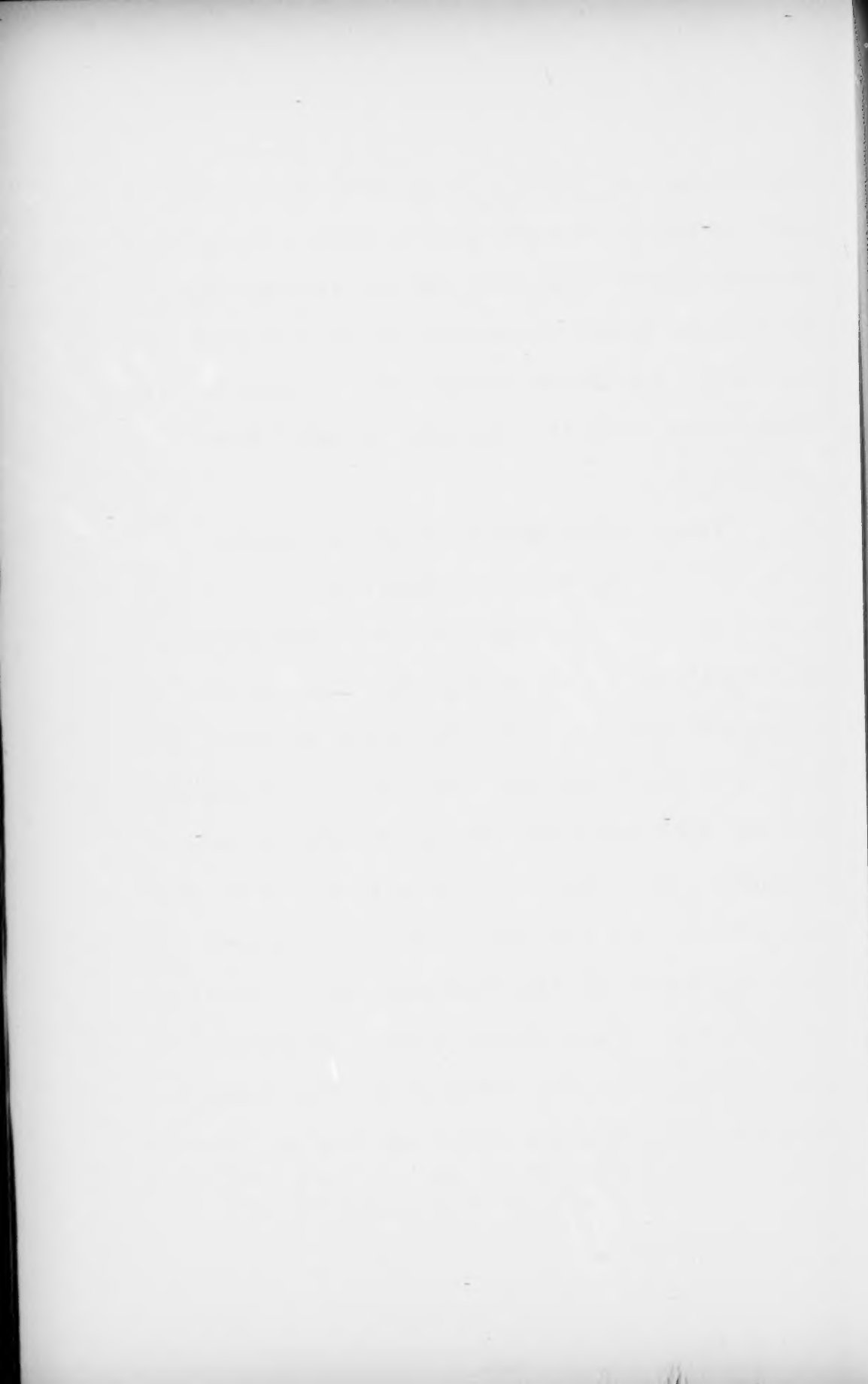
(h) If the Supreme Court directs that the order of the Commission be modified or set aside, the order of the Commission rendered in accordance with the mandate of the Supreme Court shall become final upon the



expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the Commission shall become final when so corrected.

**Same; order modified or set aside
by Court of Appeals**

(1) If the order of the Commission is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered in accordance with the mandate of the court of appeals shall become final on the expiration



of thirty days from the time such order of the Commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the Commission shall become final when so corrected.

Same; rehearing upon order or remand

(j) If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the Commission for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly file, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered upon such rehearing shall become final in the same



manner as though no prior order of the Commission had been rendered.

Definition of mandate

(k) As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

Penalty for violation of order

(1) Any person, partnership, or corporation who violates an order of the Commission to cease and desist after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than \$5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States. Each separate violation of such an order shall be a separate offense, except that in



the case of a violation through continuing failure or neglect to obey a final order of the Commission each day of continuance of such failure or neglect shall be deemed a separate offense.

Sept. 26, 1914, c. 311, § 5, 38 Stat. 719; Feb. 13, 1925, c. 229, § 2, 43 Stat. 939; Mar. 21, 1938, c. 49, § 3, 52 Stat. 111; June 25, 1948, c. 646, § 32(a), 62 Stat. 991; May 24, 1949, c. 139, § 127, 63 Stat. 107; Mar. 16, 1950, c. 61 § 4(c), 64 Stat. 21; July 14, 1952, c. 745, § 2, 66 Stat. 632; Aug. 23, 1958, Pub.L. 85-726, Title XIV, § 1411, 72 Stat. 809; Aug. 28, 1958, Pub.L. 85-791, § 3, 72 Stat. 942; Sept. 2, 1958, Pub.L. 85-909, § 3, 72 Stat. 1950; June 11, 1960, Pub.L. 86-507, § 1(13), 74 Stat. 200.

**United States Constitution Civil
Rights 42 § 1983. Civil action for
deprivation of rights**



Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.



PART 453 - FUNERAL INDUSTRY PRACTICES

Sec.

453.1 Definitions.

453.2 Price disclosures.

453.3 Misrepresentations.

As discussed previously, the purchase of a funeral is infrequent. Consequently, many consumers will not have exposure to price lists or other provisions of the rule for many years. Thus, the stimulus for price competition, at least initially, is likely to come from sellers rather than buyers. The extent to which new entrants begin to compete on the basis of price, or which existing sellers begin to compete or advertise prices, is likely to determine how quickly competition begins to affect the marketplace. Considering the industry's tradition opposition to price advertising, and other constraints on price competition and barriers



to entry, it is difficult to predict how quickly such competition will emerge.

Sec.

453.4 Required purchase of funeral goods or funeral services.

453.5 Services provided without prior approval.

453.6 Retention of documents.

453.7 Comprehension of disclosures.

453.8 Declaration of intent.

453.9 State exemptions.

453.10 Mandatory review.

Authority: Sec. 6(g) 38 Stat. 721 (15 U.S.C. 46(g); 80 Stat. 383, as amended, 81 Stat. 54 (5 U.S.C. 552).

§ 453.1 Definitions.

(a) Accounting year. "Accounting year" refers to the particular calendar year or



other one year period used by a funeral provider in keeping financial records for tax or accounting purposes.

(b) Alternative container. An "alternative container" is a non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of cardboard, press-wood, composition materials (with or without an outside covering) or pouches of canvas or other materials.

(c) Cash advance item. A "cash advance item" is any item of service or merchandise described to a purchaser as a "cash advance" "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may



include, but are not limited to, the following items: Cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(d) Casket. A "casket" is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, or like material, and ornamented and lined with fabric.

(e) Commission. "Commission" refers to the Federal Trade Commission.

(f) Cremation. "Cremation" is a heating process which incinerates human remains.

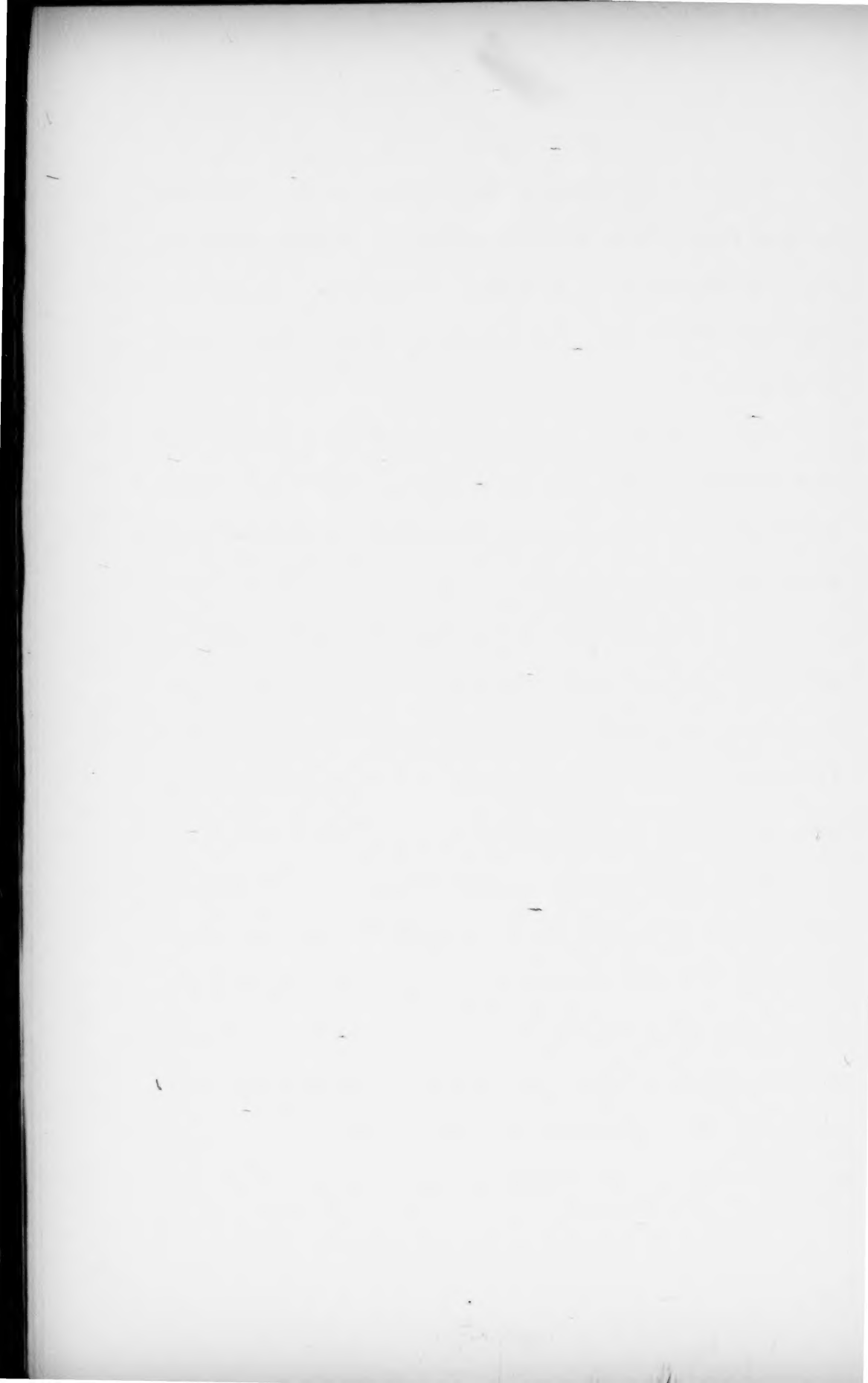
(g) Crematory. A "crematory" is any person, partnership or corporation that performs cremation and sells funeral goods.

(h) Direct cremation. A "direct cremation" is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(i) Funeral goods. "Funeral goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

(j) Funeral provider. A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

(k) Funeral services. "Funeral services" are any services which may be used to care for and prepare deceased human bodies for burial, cremation or other final disposition; and arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

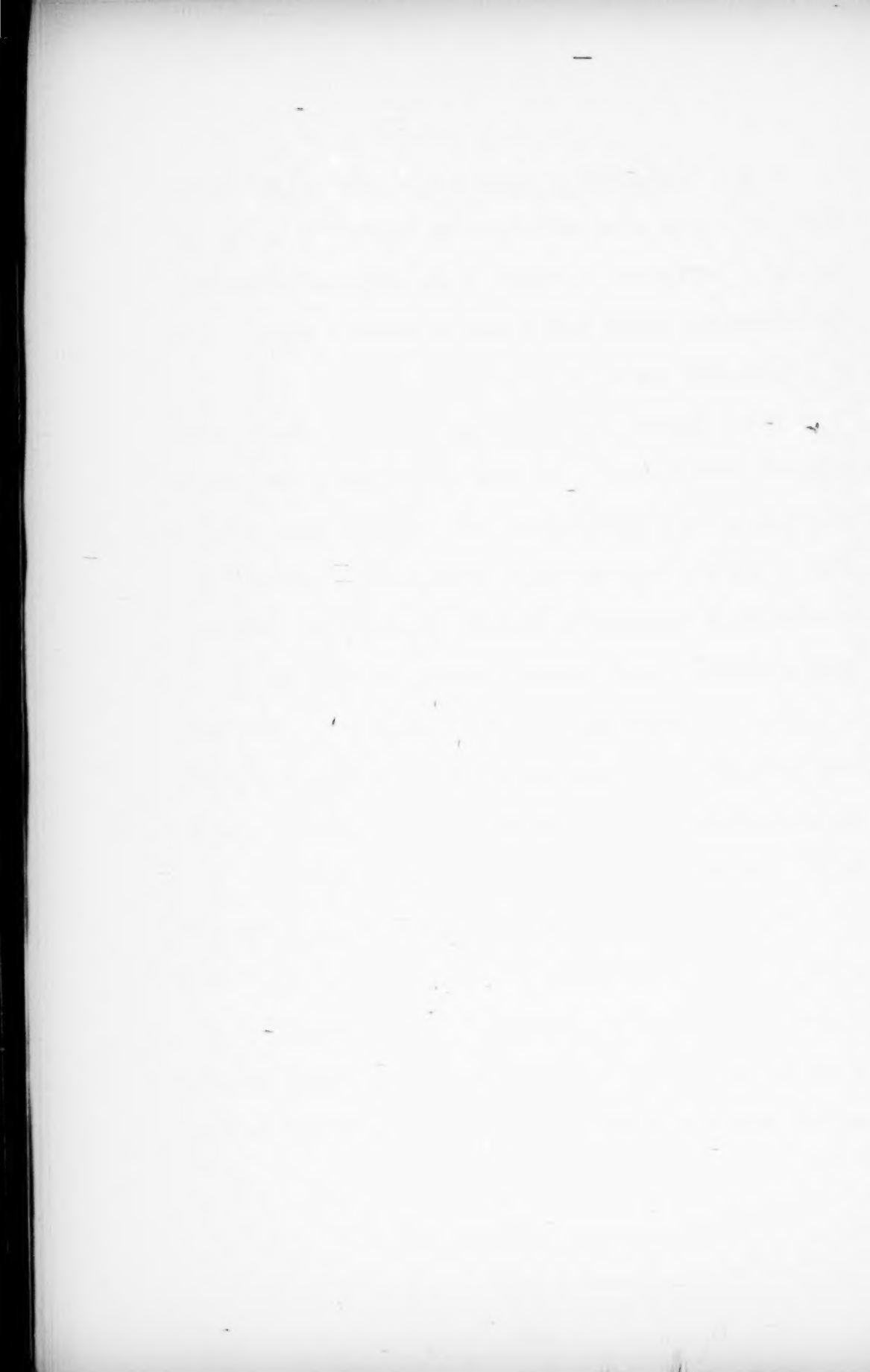


(l) Immediate burial. An "immediate burial" is a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(m) Outer burial container. An "outer burial container" is any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

(n) Person. A "person" is any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(o) Services of funeral director and staff. The "services of funeral director and staff" are the services, not included in prices of other categories in § 453.2(b)(4) which may be furnished by a funeral provider



in arranging and supervising a funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices.

(p) Unfinished wood box. An "unfinished wood box" is an unornamented casket made of wood which does not have a fixed interior lining.

§ 453.2 Price disclosures.

(a) Unfair or deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, is it an unfair or deceptive act or practice for a funeral provider to fail to furnish price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of



facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) Preventive requirements. To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

(1) Telephone price disclosures. (i) Tell persons who call the funeral provider's place of business and ask about the terms, conditions, or prices at which funeral goods or funeral services are offered, that price information is available over the telephone.

(ii) Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists in paragraph (b)(2) through (4) of this section which reasonably answers the question and any other information which reasonably answers the question and which is readily available.—

(2) Casket price list. (i) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. The list must contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu



of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information which is required by this paragraph (b)(2)(i) of this section.

(ii) Place on the list, whether a printed or typewritten list or other format is used, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) Outer burial container price list.

(i) Give a printed or typewritten price list to persons who inquire in person about outer



burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information which is



required by this paragraph (b)(3)(i) of this section.

(ii) Place on the list, whether a printed or typewritten list or other format is used, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

(4) General price list. (i) Give a printed or typewritten price list for retention to persons who inquire in person about funeral arrangements or the prices of funeral goods or funeral services. When people inquire in person about funeral arrangements or the prices of funeral goods or funeral services, the funeral provider must offer them the list upon beginning discussion either of funeral arrangements or of the selection of any funeral goods or

funeral services. This list must contain at least the following information:

(A) The name, address, and telephone number of the funeral provider's place of business;

(B) A caption describing the list as a "general price list";

(C) The effective date for the price list; and

(D) In immediate conjunction with the price disclosures required by paragraph (b)(4)(ii) of this section, the statement: "This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, newspaper notices. The prices for those items will be shown on your bill or the statement describing the funeral goods and services you selected."



(ii) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(A) Forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(B) Receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(C) The price range for the direct cremations offered by the funeral provider, together with: (1) A separate price for a direct cremation where the purchaser provides the container; (2) separate prices for each direct cremation offered including an unfinished wood box or alternative container;



and (3) a description of the services and container (where applicable), included in each price;

(D) The price range for the immediate burials offered by the funeral provider, together with: (1) A separate price for an immediate burial where the purchaser provides the casket; (2) separate prices for each immediate burial offered including a casket or alternative container; and (3) a description of the services and container (where applicable) included in that price;

(E) Transfer of remains to funeral home;

(F) Embalming;

(G) Other preparation of the body;

(H) Use of facilities for viewing;

(I) Use of facilities for funeral ceremony;



(J) Other use of facilities, together with a list of facilities provided for any quoted price;

(K) Hearse;

(L) Limousine;

(M) Other automotive equipment, together with a description of the automotive equipment provided for any quoted price; and

(N) Acknowledgment cards.

(iii) Include on the price list, in any order, the following information:

(A) Either of the following:

(1) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home"; or

(2) The prices of individual caskets, disclosed in the manner specified by paragraph (b)(2)(i) of this section; and



(B) Either of the following:

(1) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home"; or

(2) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and

(C) Either of the following:

(1) The price for the services of funeral director and staff, together with a list of principal services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate



burials, and forwarding or receiving remains.)"; or

(2) The following statement: "Please note that a fee for the use of our services is included in the price of our caskets. Our services include (specify)." The statement must be placed on the general price list together with casket price range, required by paragraph (b)(4)(iii)(A)(1) of this section, or together with the prices of individual caskets, required by (b)(4)(iii)(A)(2).

(5) Statement of funeral goods and services selected. (i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:



(A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(B) Specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid); and

(C) The total cost of the goods and services selected.

(ii) The information required by this paragraph (b)(5) of this section may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.



(6) Other pricing methods. Funeral providers may give persons any other price information, in any other format, in addition to that required by paragraph (b)(2), (3), and (4) of this section so long as the statement required by paragraph (b)(5) of this section is given when required by the rule.

§ 453.3 Misrepresentations.

(a) Embalming Provisions. - (1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires that a deceased person be embalmed when such is not the case;

(ii) Fail to disclose that embalming is not required by law except in certain special cases.



(2) Preventive requirements. To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § § 453.4(b)(1) and 453.5(2), funeral providers must;

(i) Not represent that a deceased person is required to be embalmed for direct cremation, immediate burial, a funeral using a sealed casket, or if refrigeration is available and the funeral is without viewing or visitation and with a closed casket when state or local law does not require embalming; and

(ii) Place the following disclosure on the general price list, required by § 453.2(b)(4), in immediate conjunction with the price shown for embalming: "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral

arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay for it, such as direct cremation or immediate burial."

(b) Casket for cremation provisions.

(1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires a casket for direct cremations;

(ii) Represent that a casket (other than an unfinished wood box) is required for direct cremations.

(2) Preventive requirements. To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(a)(1), funeral providers must place the following disclosure in



immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without an outside covering), or pouches of canvas." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) Outer burial container provisions. -

(1) Deceptive acts or practices. In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;



(ii) Fail to disclose to person arranging funerals that state law does not require the purchase of an outer burial container.

(2) Preventive requirement. To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by § 453.2(b)(3)(ii), or, if the prices of outer burial containers are listed on the general price list, required by § 453.2(b)(4), in immediate conjunction with those prices: "In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements."



(d) General provisions on legal and cemetery requirements. - (1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) Preventive requirements. To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in § 453.3(a)(1), § 453.3(b)(1), and § 453.3(c)(1), funeral providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by § 453.2(b)(5) any legal, cemetery, or crematory requirement which the funeral provider represents to



persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) Provision on preservative and protective value claims. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for the funeral provider to:

(1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

(2) Represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) Cash advance provisions. - (1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral



services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case;

(ii) Fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) Preventive requirements. To prevent these deceptive acts or practices, funeral providers must place the following sentence in the general price list, at the end of the cash advances disclosure, required by § 453.2(b)(4)(ii)(C): "We charge you for our services in buying these items," if the funeral provider makes a change upon, or receives and retains a rebate, commission or



trade or volume discount upon a cash advance item.

§ 453.4 Required purchase of funeral goods or funeral services.

(a) Casket for cremation provisions. -

(1) Unfair or deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket other than an unfinished wood box be purchased for direct cremation.

(2) Preventive requirement. To prevent this unfair or deceptive act or practice, funeral providers must make and unfinished wood box or alternative container available for direct cremations, if they arrange direct cremations.

(b) Other required purchases of funeral good or funeral services. (1) Unfair or

deceptive acts or practices. In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part.

(2) Preventive requirements. (i) To prevent this unfair or deceptive act or practice, funeral providers must:

(A) Place the following disclosure in the general price list, immediately above the prices required by § 453.2(b)(4)(ii) and (iii): "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for,



we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected."

Provided however, That if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our services" between the second and third sentences of the statement specified above herein: and

(B) Place the following disclosure on the statement of funeral goods and services selected, required by § 453.2(b)(5)(ii): "Charges are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing below."

(ii) A funeral provider shall not violate this section by failing to comply

with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

§ 453.5 Services provided without prior approval.

(a) Unfair or Deceptive Acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or

(2) Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or



(3) The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which required embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) Preventive requirement. To prevent these unfair or deceptive acts or practices, funeral providers must include on the contract, final bill, or other written evidence of the agreement or obligation given to the customer, the statement: "If you



selected a funeral which requires embalming, such as a funeral with viewing you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangement such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

§ 453.6 Retention of documents.

To prevent the unfair or deceptive acts or practices specified in § 453.2 and § 453.3 of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in § 453.2(b) (2) through (4), as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b) (5) for



at least one year from the date on which the statement was signed.

§ 453.7 Comprehension of disclosures.

To prevent the unfair or deceptive acts or practices specified in § 453.2 through § 453.5, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner.

§ 453.8 Declaration of Intent.

(a) Except as otherwise provided in § 453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specific in this rule;

(b) The provisions of this rule are sparate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the



remaining provisions shall continue in effect.

(c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

§ 453.9 State exemptions.

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long



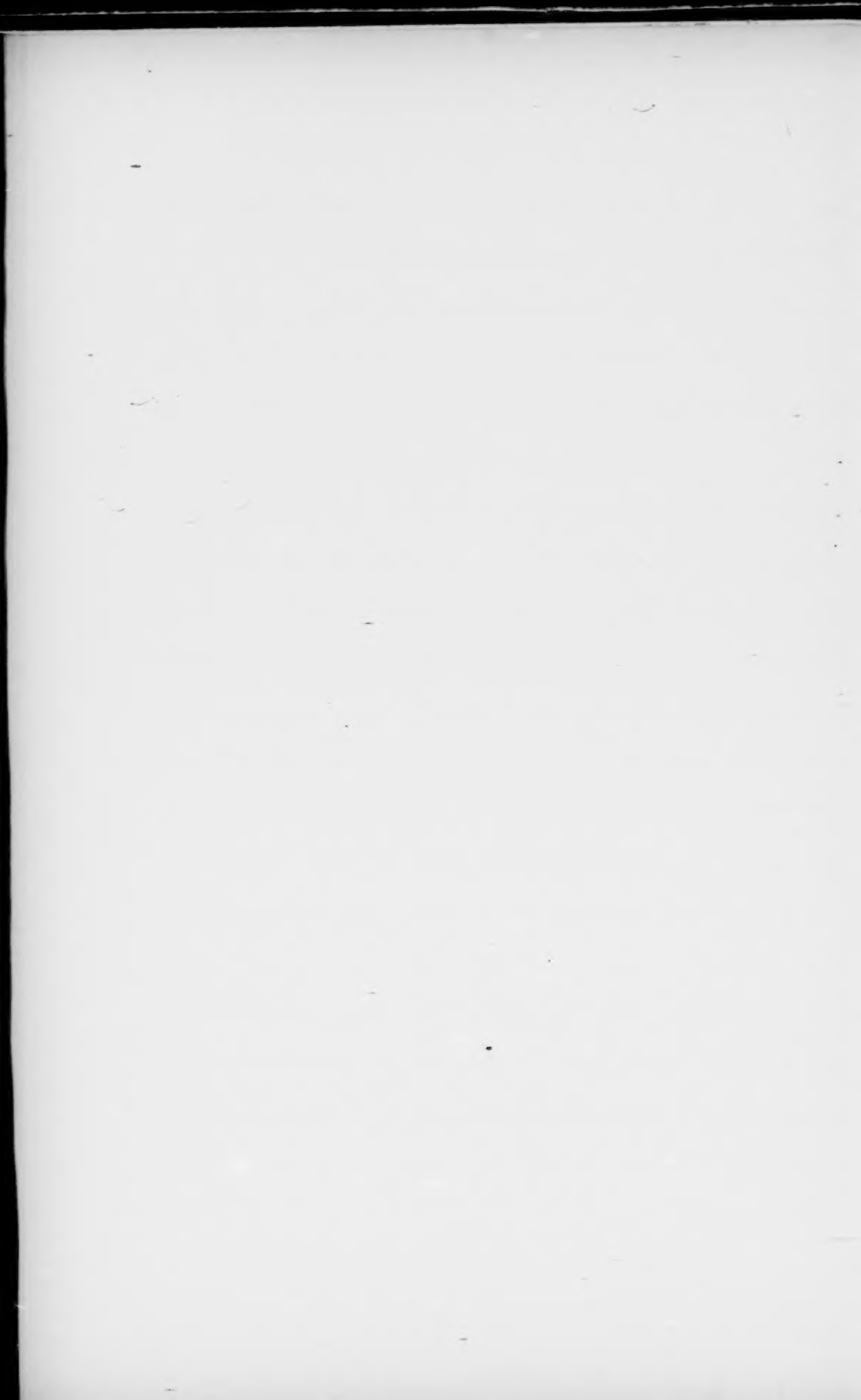
as the State administers and enforces effectively the state requirement.

§ 453.10 Mandatory review.

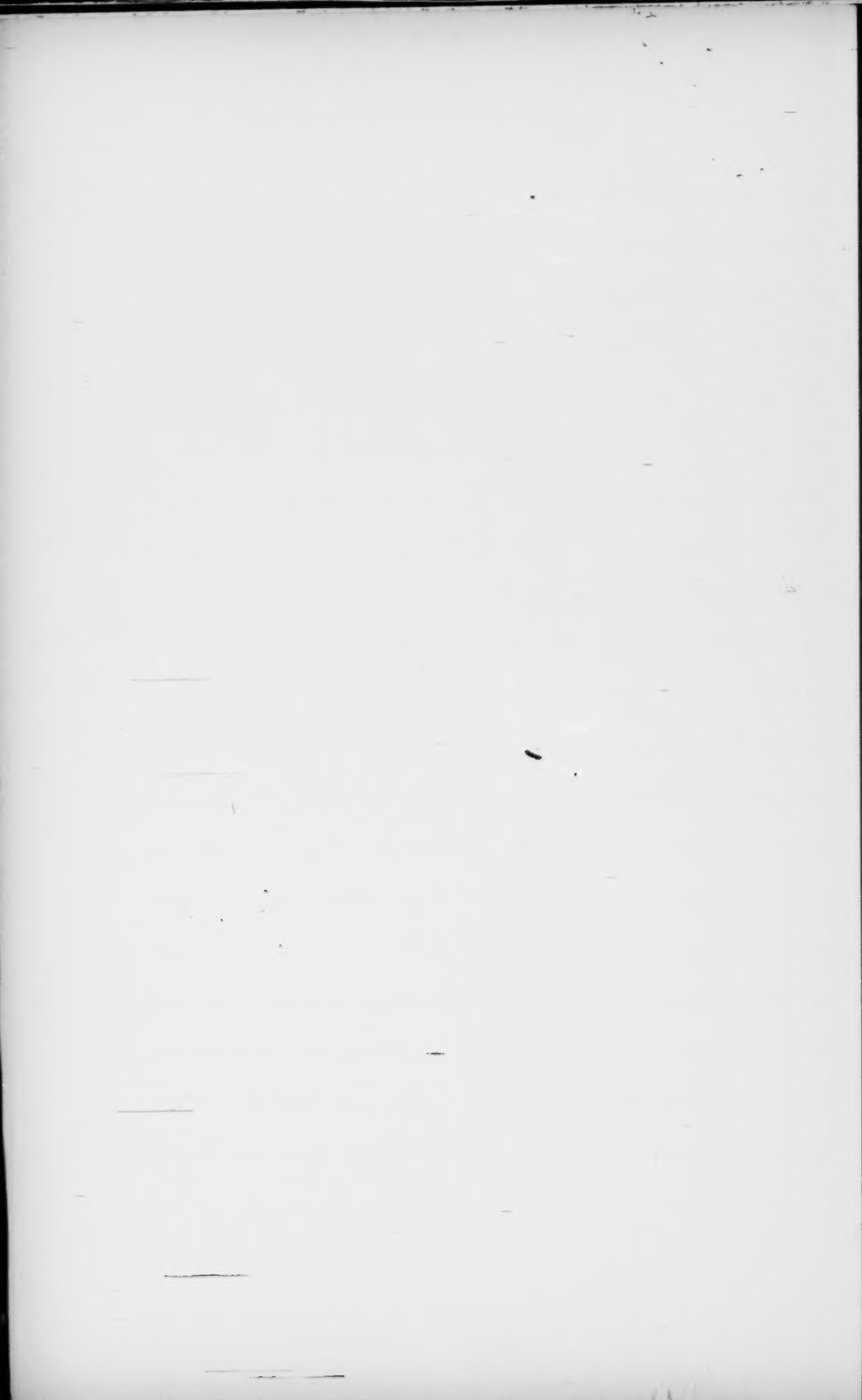
No later than four years after the effective date of this rule, the Commission shall initiate a rulemaking amendment proceeding pursuant to section 18(d)(2)(B) to determine whether the rule should be amended or terminated. The Commission's final decision on the recommendations of this proceeding shall be made no later than eighteen months after the initiation of the proceeding.

West Virginia Code § 46A-2-132. Home solicitation; buyer's right to cancel; notice.

In addition to any other right to revoke an offer, a buyer shall have the right to cancel a home solicitation sale until midnight of the third business day after the



day on which he has signed an agreement or offer to purchase. Cancellation shall become effective when the buyer gives written notice of his intention to cancel to the seller at the address stated in the agreement or offer to purchase. Notice of such cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid. Such notice of cancellation given by the buyer need not take any particular form and shall be sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale. Notwithstanding any above-mentioned provision, a buyer may not cancel a home solicitation sale where he has requested and the seller has provided goods or services without delay because of a bona fide emergency and either the seller has in good



faith made a substantial beginning of performance of the agreement before the buyer has given notice of cancellation, or in the case of goods, such goods cannot be returned to the seller in substantially as good condition as when they were received by the buyer. (1974, c. 12.)

West Virginia Code § 47-14-1.

Declaration of policy; legislative intent.

It is contrary to public policy for any person to receive, hold, control or manage funds or proceeds received from the sale of, or from a contract to sell, funeral services, funeral goods, burial goods or any one or combination of them, where payments for same are made either outright or on an installment basis, prior to the death of the person or persons so purchasing them, or for whom they are purchased, unless that person holds, controls or manages those funds subject to



the limitations regulations prescribed by this article.

It is the legislative intent that the provisions of this article shall be construed as a limitation upon the manner in which a person is permitted to accept funds in prepayment of funeral services to be performed in the future, or funeral or burial goods to be used in connection with the funeral or final disposition of human remains, so that at all times members of the public may have an opportunity to arrange and pay for funerals for themselves and their families in advance of need while at the same time providing all possible safeguards whereunder such prepaid funds cannot be dissipated, whether intentionally or not, in order that such funds are available for the payment of funeral services so arranged. Further, it is the legislative intent that no



person may offer, sell or negotiate for the sale of a preneed funeral service contract through anyone who is not licensed under this article. (1965, c. 145; 1983, c. 161.)

§ 47-14-2. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Burial goods" means all merchandise supplied in regard to burial, or entombment in a mausoleum or inurnment in a columbarium, but does not include those services actually performed by a cemetery acting only as such, or the sale by any person of cemetery lots, land or interest therein, services incidental thereto, or the sale by any person of markers, memorials, monuments, equipment, crypts, urns, burial vaults or vaults constructed or to be constructed in a mausoleum or columbarium.

(2) "Contract beneficiary" means any person specified or implied in a preneed



funeral contract, upon whose death funeral services, funeral goods or burial goods shall be performed, provided or delivered.

(3) "Contract buyer" means any person, whether or not a contract beneficiary, who purchases goods or services pursuant to a preneed funeral contract but shall not include any person other than a natural person.

(4) "Contract seller" or "seller" means a person, his agent or his employee, who sells, makes available or provides preneed funeral contracts.

(5) "Department" means the state department of labor.

(6) "Funds" means moneys or other consideration received pursuant to the sale of a preneed funeral contract, including interest accrued or earned thereon.



(7) "Funeral goods" means those items of merchandise sold or offered for sale directly to the public by any person which will be used in connection with a funeral or alternative for final disposition of human remains, but does not include those services actually performed by a cemetery acting only as such, or the sale by the cemetery of cemetery lots, land or interest therein, services incidental thereto, or the sale by any person of markers, memorials, monuments, equipment, crypts, urns, burial vaults or vaults constructed or to be constructed in a mausoleum or columbarium.

(8) "Funeral services" means those services usually performed by a funeral service licensee, including, but not limited to, care and preparation of human remains and coordinating rites and ceremonies in connection with the disposition of human



remains carried out at the request of any individual responsible for funeral and disposition arrangements.

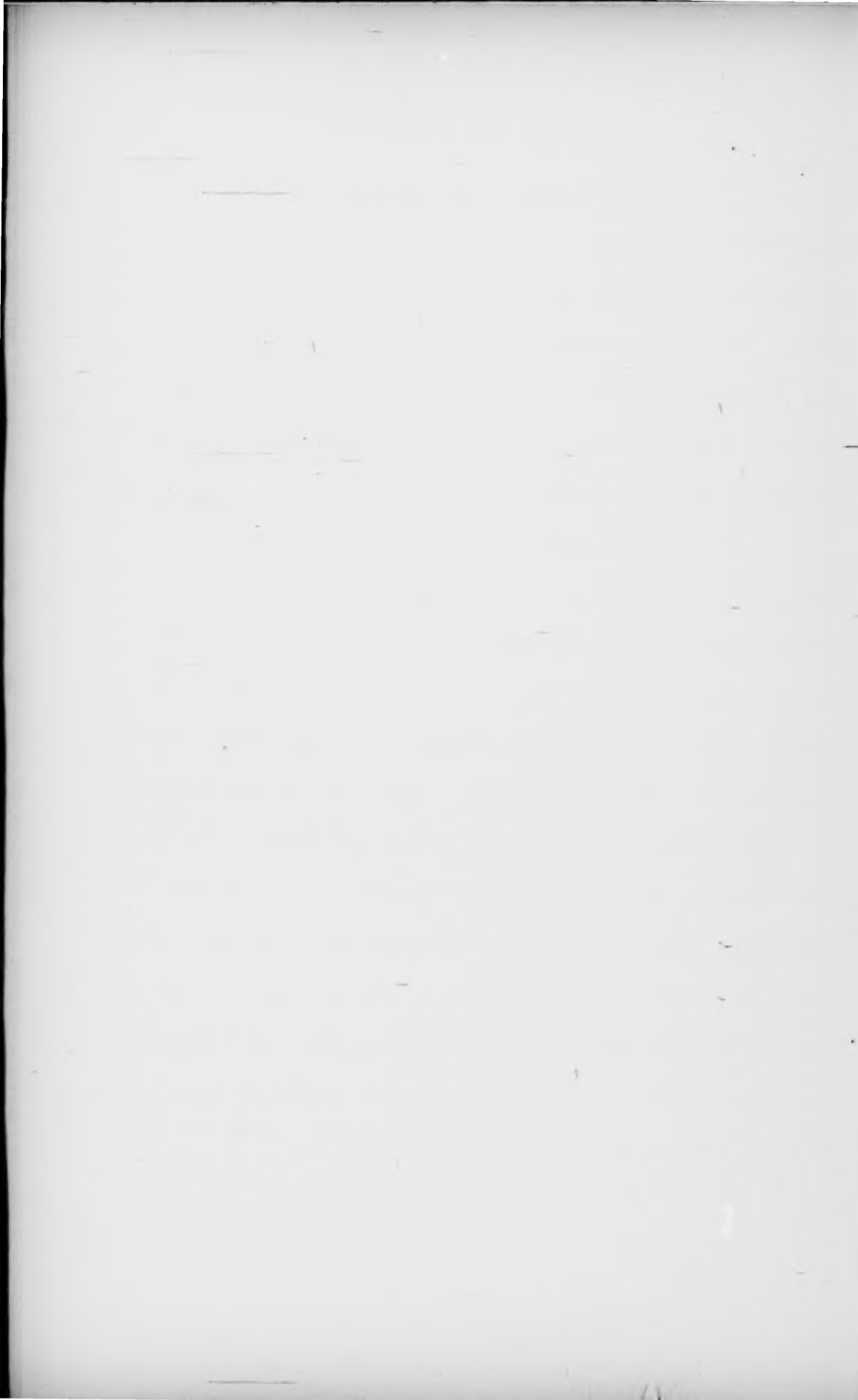
(9) "Person" means a natural person, partnership, firm, association or corporation, including any agent or employee thereof residing in or doing business in the State who is engaged in the selling of, making available of or providing of "preneed funeral contracts," defined herein, or is the recipient of funds paid for such purpose.

(10) "Person who makes a preneed funeral contract available" means a person who, while not directly selling the contents of a preneed funeral contract to the public through his efforts, makes such contracts available to the public but shall not include manufacturers of funeral goods or burial goods.



(11) "Personal residence" means any residential building in which one temporarily or permanently maintains his abode including, but not limited to, hotels, motels, apartments, nursing homes, convalescent homes, homes for the aged and public and private institutions.

(12) "Preneed funeral contract" means any contract, agreement, mutual understanding, series or combination of contracts, agreements and mutual understandings, other than a contract of insurance, under which, for a specified consideration paid in advance of death in a lump sum or by installments, a person promises to furnish or make available or provide funeral services, funeral goods or burial goods for use at a time determinable by the death of the "contract beneficiary" who is either named or implied.



(13) "Provider" means a person who, though not a party to a preneed funeral contract does, through his efforts, make the services or goods referred to in such a contract available to the public pursuant to such a contract.

(14) "Trustee" means any natural person, partnership or corporation, including any bank, trust company, savings and loan association or credit union, which receives money pursuant to any agreement or contract made pursuant to the provisions of this article. (1983, c. 161.)

§ 47-14-3. Certificate of authority required; fees to go to department of labor; special account established; duties of certificate holder.

(a) No person may receive, hold, control or manage any funds or other thing of value tendered as payment on any preneed funeral contract unless such person has



obtained a certificate of authority or renewal thereof from the department: Provided, That no bank, trust company, savings and loan association or other financial institution regulated by this State or insured by an agency of the United States federal government is required to obtain a certificate of authority.

(b) No person may sell, make available or be a provider of a preneed funeral contract unless such person has obtained a certificate of authority or renewal thereof from the department.

(c) Any person desiring to obtain a certificate of authority shall file with the department, upon forms provided by the department, a completed application, together with a one hundred dollar application fee for his original certificate of authority. The fee shall be payable to a special revenue



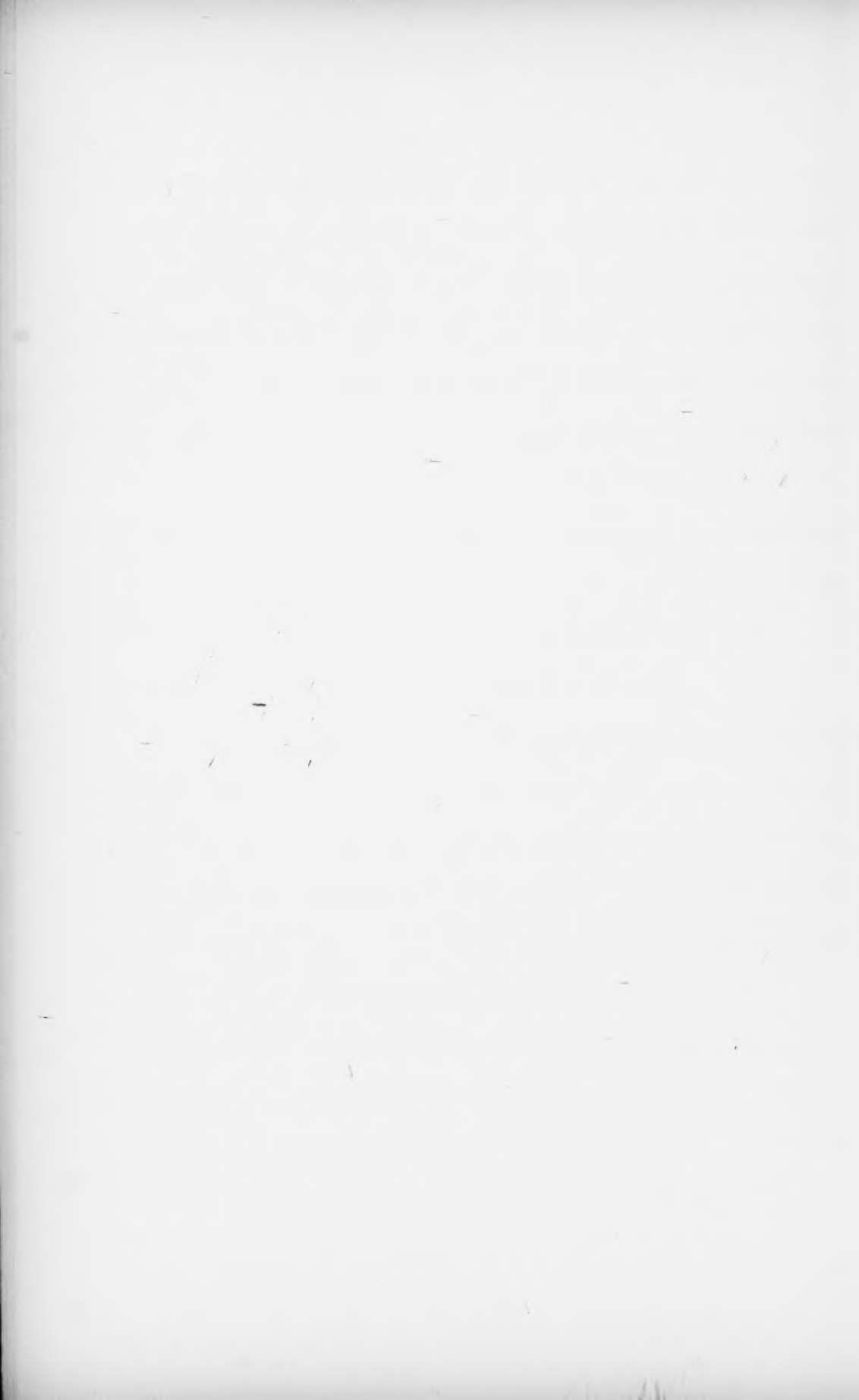
account to be known as the "Preneed Burial Contract Regulation Fund" for the purpose of administering the provisions of this article. The original application or a renewal application shall contain at least the following information:

(1) The name and address of each person owning ten percent or more interest in the applicant;

(2) The experience of the applicant;

(3) Such other information as the department may require to determine to its satisfaction that the applicant possesses the ability, experience, financial stability and integrity to deal in preneed funeral contracts; and

(4) The types of preneed funeral contracts proposed to be written or otherwise dealt in and copies of any writings used pursuant thereto; and if a person is a party



to or bound any any such contract, an itemization of all outstanding preneed funeral contracts, the dates upon which such contracts were entered into, the names of all parties involved in such contracts or having any right thereunder, the amount paid toward each contract and, if payments are not completed, the amounts owing on each contract and the present depository or holder of all such funds.

(d) Each certificate of authority holder shall renew its certificate of authority according to the schedule established by this article. The fee for renewal shall be two hundred dollars, payable to the "Preneed Burial Contract Regulation Fund" established by this section.

(e) Each certificate of authority holder shall file with the department an annual



report with its request for renewal which shall contain the following:

(1) An identification of all outstanding preneed funeral contracts, the dates upon which the contracts were entered, the names of all parties involved in such contracts or having any right thereunder, including, but not limited to, the beneficiary, the amount paid on each contract and, if payments are not completed, the amounts owing and the present balance of funds applicable to each such contract.

(2) The name of the contract seller and the name of the provider of services and goods and a statement that the provider has sufficient funds available to perform all of its obligations under its contracts.

(3) A statement that the contract seller and the person receiving funds paid thereunder have complied with the trust



requirements of this article and of the present depository or holder of such funds and a statement of all the amounts thereof itemized as to each such contract.

(4) Any changes or amendments in any contracts or obligations of the seller and provider that occurred since the date of the last report.

(5) Such other information as may be considered necessary by the department in order to meet its responsibilities under this article.

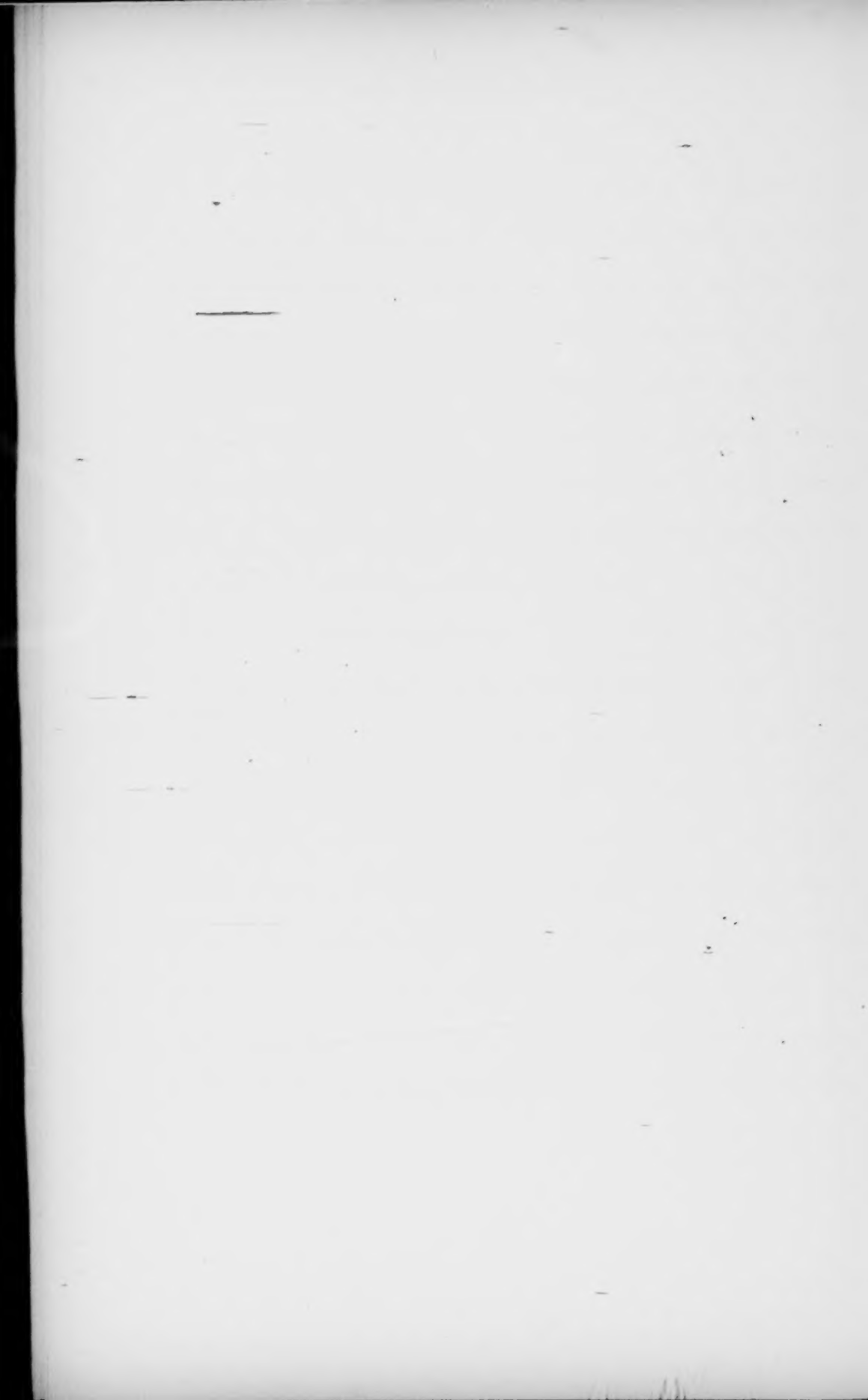
This annual report shall be required of any person who sells, provides or makes preneed funeral contracts available or receives moneys or other consideration therefor from the public.

(f) An original certificate of authority expires on the thirty-first day of December following its issuance.



(g) Every application, request for renewal and statement filed with either of the foregoing shall be sworn by the applicant or certificate holder. If the certificate holder is a partnership, it shall be sworn by each member thereof. If the certificate holder is a corporation, it shall be sworn by the president and secretary thereof.

(h) Upon the department's being satisfied that the statement and matters which may accompany it meet the requirements of this article and of its rules and regulations and, if by investigation by the department of the principals, including directors, officers, stockholders, employees and agents of such person, nothing is found to warrant denial of the certificate, the department shall issue to such person the certificate of authority or renewal thereof.



(i)(1) The certificate holder shall keep accurate accounts, books and records in this State of all transactions, copies of all contracts, dates and amounts of payments made and accepted thereon, the name and address of each contract buyer, the name of the beneficiary as to each contract, the name of the trustee holding trust funds received under each contract and such other records as the department may require to enable it to determine whether such certificate holder is complying with the provisions of this article. Such records must be kept until twelve months after termination of the applicable preneed contract.

(2) The certificate holder shall make all books and records pertaining to preneed funeral contracts available to the department for examination. The department may not more frequently than once in any calendar year,



unless pursuant to an order of court for good cause shown, during ordinary business hours, cause to be examined the books, records and accounts of the certificate holder with respect to funds received by said certificate holder and for that purpose may require the attendance of and examine, under oath, all persons whose testimony he may require.

(3) The certificate holder shall pay for the costs of any examination which is not the first one in that calendar year, including the salary and traveling expenses paid to the person making the examination during the time spent in making the examination and in traveling to and returning from the point where the records are kept and all other expenses necessarily incurred in the examination. The department shall assess and collect a fee for each such examination, based on the certificate holder's total



outstanding preneed funeral service contracts and the cost of such examination, but the cost to the person being audited shall not be more than a total cost of five hundred dollars for each such examination. This fee shall be payable to the "Preneed Burial Contract Regulation Fund" established in this section. (1983, c. 161.)

**§ 47-14-4. Agents and employees;
licenses required; fee to go to
department of labor.**

No agent or employee of a contract seller may sell preneed funeral contracts in this State without first obtaining from the department a license for such purpose. The fee for such license and the annual renewal thereof shall be twenty-five dollars. These fees shall be payable to the "Preneed Burial Contract Regulation Fund" established by section three {§ 47-14-3} of this article.



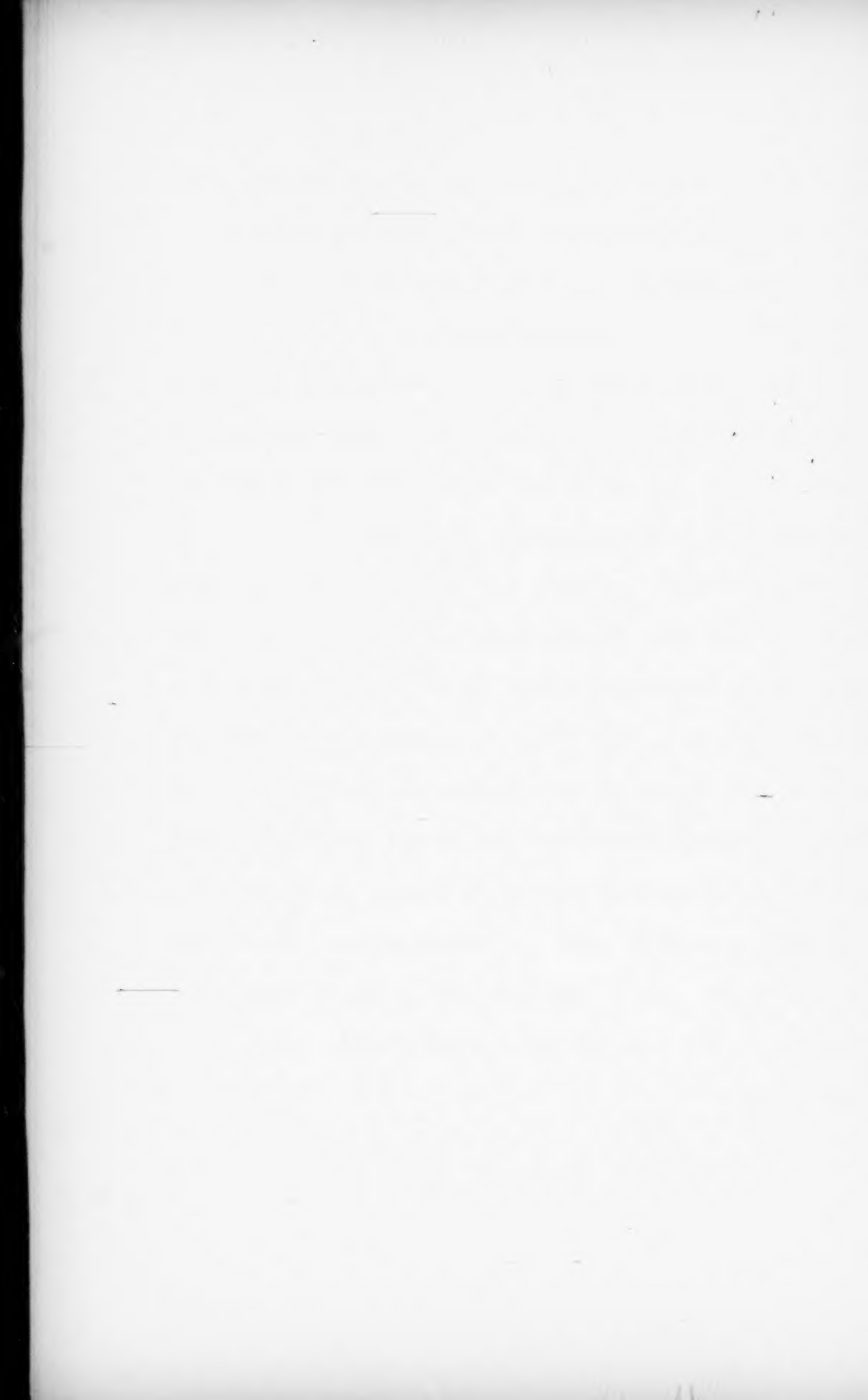
The commissioner shall not issue such license without requiring an applicant for the license, or if the applicant is a corporation, its individual agents, to provide proof to warrant its issuance by presenting with the application affidavits from his employer stating that, to the employer's best information, knowledge and belief the applicant merits a license. The acts of the agent shall be considered acts of the employer. The department may require the applicant to pass a written examination to ascertain if the applicant has sufficient knowledge of the industry and the provisions of this article to properly carry on the business covered by this article. (1983, c. 161.)



§ 47-14-5. Disposition of proceeds;
trusts; procedure for administration;
department to promulgate rules and
regulations.

(a) All sums paid or collected on such contracts entered into after the effective date (June 7, 1983) of this article shall be handled in the following manner:

(1) The contract seller or other person collecting the funds may retain for his own use and benefits and for the purpose of covering his selling expenses, servicing costs and general overhead, an amount not to exceed ten percent of the total amount agreed to be paid by the contract buyer as reflected in the preneed funeral contract. Such ten percent or other amount is exempt from the trust and refunding provisions of this article;



(2) All of the funds collected under the contract, less the amount authorized to be deducted under subdivision (1) of this subsection shall be deposited under the provisions of subdivision (3) hereof;

(3) Unless otherwise specifically exempt under this article, all funds paid to or collected by any person from a preneed funeral contract shall, within thirty days after receipt thereof by such a person, be deposited in this State (i) in the name of a trustee who is a contract seller, provider or person making the preneed funeral contract available, in a state or federally chartered and insured bank, savings institution, building and loan institution located in this State or in a state or federally chartered credit union located in this State, or (ii) under the terms of a trust instrument entered into with a national or state bank having



trust powers or a trust company located in this State.

(b) The funds to be deposited from more than one preneed funeral contract may at the option of the recipient thereof or the certificate of authority holder, be placed in a common or commingled trust fund in this State under a single trust instrument.

(c) All deposits shall be placed in an account with a trustee in the name of the contract seller, provider or person making the contract available, as set forth in the contract seller, to whom the contract buyer makes payment. Records shall be maintained as to each contract showing the amount paid, the amount deposited and the amount invested with respect to any particular buyer's contract.

(d) All funds required to be deposited and covered by this article shall remain in this State.



(e) All accounts of money deposited in any bank, savings institution, building and loan association or credit union in accordance with the provisions of this article are subject to periodic examination by the department of banking of this State.

(f) The department shall promulgate rules and regulations in accordance with chapter twenty-nine-A {§ 29A-1-1 et seq.} of this Code for the purpose of administering the provisions of this article: Provided, That the department shall, by such rules and regulations, require the contract seller to secure a fidelity bond of sufficient surety to guarantee that a contract purchaser who cancels a contract under the provisions of this article receives all of the moneys paid into any trust account. (1965, c. 145; 1974, c. 95; 1983, c. 161.)



§ 47-14-6. Withdrawal of funds.

(a) Disbursements of funds discharging any preneed funeral contract shall be made by the trustee to the person named in the contract upon receipt of a certified photostatic copy of the death certificate of the contract beneficiary and evidence satisfactory to the trustee that the preneed funeral service or preneed burial supply contract has been fully performed. In the event that, after the death of the contract beneficiary, the contract services or goods are not provided because they are not desired by the heirs or by the personal representatives of the contract beneficiary, the trustee shall have authority to expend one hundred percent of the amount placed in the trust account and paid on the contract, in any general locality within or outside of this State, which shall be the burial



location of the contract beneficiary. If the service and goods are not provided upon the death of the contract beneficiary because of actions of the seller, provider or person making the preneed funeral contract available, then all of the funds held on deposit shall in ten days be refunded to the contract buyer or his legal representative who also has available any other remedy set forth in this article.

(b) Any contract buyer or legally authorized person, acting in his behalf, may cancel a preneed funeral contract prior to death of the contract beneficiary by notifying in writing the contract seller or present obligor of the provisions thereof, if a different person, of such desire to cancel. The seller or obligor shall, in ten days after receipt of such notice, notify the trustee of such cancellation and the trustee



shall within thirty days after receipt of written notification pay to the contract buyer, or his legal representative, all funds placed in the trust account and paid on the contract.

(c) If the contract buyer is more than one hundred eighty days in default with respect to any payment or installment due on or pursuant to the preneed funeral contract, the contract seller or provider may, on ten days' prior written notice, cancel the contract. All funds in the trust account shall be refunded to the contract purchaser or to the estate of the contract beneficiary.

(d) The seller of a preneed funeral contract may not cancel the contract unless the contract is in default as to the buyer's obligations.

(e) Payment by any depository or any trustee made in good faith pursuant to the



terms of this section shall forever relieve such depository or trustee, as such, for any further liability for such funds under the contract and in law. (1955, c. 153; 1965, c. 145; 1983, c. 161.)

§ 47-14-7. Income on trust accounts.

(a) Whether the payments on a preneed funeral contract are placed in a bank, savings institution, building and loan association, credit union or in a common trust fund s permitted in this article, or are part of a commingled common trust fund as permitted in this article, the income from a contract deposit shall accrue to the individual account until such time as the burial goods, funeral goods and funeral services for the contract beneficiary are required to be delivered and returned by reason of such beneficiary's death.



(b) Upon the death of such contract beneficiary, the total amount in the trust account attributable to the contract beneficiary, the total amount in the trust account attributable to the contract beneficiary shall be disbursed as follows:

(1) If the cost of the goods and services contracted for at the time of such beneficiary's death exceeds the amount paid under the contract, then the provider may have and use the principal and so much of the interest as may be necessary to defray such additional cost over and above the contract cost:

Provided. That, to the extent that the cost of goods and services provided exceeds the principal and interest thereon, the provider shall provide and make available the goods and services contracted for at no additional cost to the contract purchaser or to the



heirs or personal representative of the contract beneficiary.

(2) To the extent the principal and interest thereon exceed the cost of the goods and services contracted for, then the provider may retain only so much of the principal and interest necessary to defray the total of such cost and the balance shall be returned to the estate of the contract beneficiary or to the contract buyer as may be proper under the provisions of this article or the rules and regulations of the department.

(c) The trustee for the trust shall make annual valuations of assets held in trust. No person may withdraw income from the trust, except for the purpose of executing the terms of the contract and to disburse the trust proceeds as provided in subsection (b) of



this section. (1955, c. 153; 1965, c. 145; 1983, c. 161.)

§ 47-14-8. Limitations on enforcement of contract; appointment and removal of trustees; standards for administration of trusts; contracts may be irrevocable; "Preneed Guarantee Fund" established; assignment of contract allowed; credit life insurance allowed; successor in interest defined.

(a) A contract seller, provider or person making the preneed funeral contract available may not enforce a preneed funeral contract made in violation of this article, but a contract buyer or his heirs or legal representative may recover all amounts paid under his contract and all accrued income on such amount where the contract seller, provider or person making the preneed funeral



contract available has violated the provisions of this article as to such contract. The right of such recovery is in addition to the remedy provided for in section twelve {§ 47-14-12} of this article.

(b) A contract seller, provider or person making the preneed funeral contract available may appoint a board of at least three individual trustees under a trust instrument, if the trustee is other than a chartered state or national bank or trust company under the supervision of the department of banking of this State, to serve as trustees of its trust funds. Each individual trustee shall be a resident of this State and shall hold office subject to the direction of the seller. Not more than one member of the board of trustees of a trust fund may have a proprietary interest in the seller appointing trustees or in any



certificate of authority holder who is placing funds in such trust.

Individual trustees of a trust fund shall file a fidelity bond with the corporate surety thereon which is licensed to do business in this State with the department of labor in an amount equal to the funds in trust, guaranteeing payment of damages occasioned by breach of the trustee's fiduciary duties. The trustees of one or more trust funds need file only one such bond. The aggregate liability of the surety shall in no case exceed the face amount of the bond. The department of labor or any aggrieved person claiming against any bond required by this section may maintain any action against the trustee and the surety. Individual trustees shall take no action respecting trust funds unless there is on file with the department a bond as required

by this section. If the trustees are individuals, the commissioner may suspend the certificate of authority of any contract seller, provider or person making the preneed funeral contract available having trust funds with respect to which there is no bond on file with the department as required by this section.

(c) All trustees under the terms of this article are subject to the following investment standards: In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of others, trustees have the responsibilities which customarily attach to such offices and to the type of estates entrusted to their care and shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the



management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(d) No preneed funeral contract may restrict any contract buyer who, for the purpose of receiving public assistance, may make his or her contract irrevocable in accordance with the laws and regulations of this State.

(e) All preneed funeral contracts must be in writing and no contract form may be used without prior approval of the department.

(f) Each contract buyer shall pay a fee of five dollars to the contract seller, who in turn will forward such sum to the department within ten days after execution of the preneed funeral contract. The contract



shall be recorded in the department. Within ten days after receiving the fee, the department will notify the contract purchaser, by mail, of the recording. The fees shall be placed by the department in an account under the department's control entitled "Preneed Guarantee Fund," and the income thereon shall accrue to the fund. The department may use such income, if necessary in its discretion, to enforce this article.

In the event any buyer of any preneed funeral contract is unable to receive the benefits of his contract, or to receive the funds due by reason of his cancellation thereof, such buyer may apply to the department on a form supplied by the department. Upon the finding of the department that said benefits or return of payment is not available to the buyer, the department will cause to be paid to the said



buyer from the "Preneed Guarantee Fund" the amount actually paid by the buyer under his or her contract. If the seller's liability for default is subsequently proven, any award made by a court of law shall be made payable to the "Preneed Burial Contract Regulation Fund" established in section three {§ 47-14-3} of this article.

(g) Notwithstanding the provisions of subsection (f), section five {§ 47-14-5(f)} of this article, delivery of funeral or burial goods prior to the death of the person for whose benefit they are purchased does not constitute performance or fulfillment, either wholly or in part, of any preneed contract or series of contracts.

(h) The contract buyer may, on acceptance in writing by a transferee, transfer the obligations of the seller, provider or person making the preneed funeral



contract available to other persons within or without this State. The funds on deposit for the contract on any future payments, if any, by the contract buyer shall then be transferred to and deposited under applicable state law, if any, in the state wherein the contract buyer resides or to a state where the obligations of the provider of the funeral service and goods will be fulfilled.

Upon such transfer, the contract buyer and transferee shall, in writing, release the contract seller, provider or person making the preneed funeral contract available and the trusts, as applicable, for any further liability under such contract.

Nothing in this article or in any preneed contract may limit the right of a contract buyer to assign such a contract to any person whomsoever except as specifically provided herein and except that if the assignee is a

resident of this State or the contract is to be fulfilled by the assignee in this State, the assignee must hold a certificate of authority under this article. If the contract is to be fulfilled in another state, the assignee must in all respects be in compliance with the preneed funeral law of that state, if any.

(i) Notwithstanding any other law of this State, a contract seller, provider or person making the preneed funeral contract available, may if requested by the contract buyer where the contract is to be paid installments, provide for the sale of credit life insurance on the life of the contract beneficiary in order to have the funds necessary to make payment in full under the contract if the beneficiary should die prior to completing all the payments due. The seller shall disclose all costs of such



insurance in clear language and shall inquire of the buyer whether he understands the terms of the insurance contract and is aware of the total cost of the insurance.

(j) In the event any certificate of authority holder or anyone in violation of the article who has outstanding preneed funeral contracts and is not the current holder of a certificate of authority sells its business, through the sale of assets or stock, which is involved in the fulfillment of obligations under preneed funeral contracts, the buyer of such business is a "successor in interest" and is covered not only by this article but shall assume the obligations of seller under seller's outstanding preneed funeral contracts regardless of whether seller made known to buyer the existence of such contract or contracts. (1983, c. 161.)



§ 47-14-9. Forms and rules.

The administration and enforcement of the provisions of this article are vested in the department. The department shall prepare and furnish all forms necessary under this article, including forms for applications for certificates of authority, for renewals thereof, for annual statements, for other required reports and for preneed funeral contracts. The department shall promulgate, in accordance with the provisions of chapter twenty-nine-A {§ 29A-1-1 et seq.} of this Code, such rules and regulations as may be necessary to effectuate the purpose of this article. (1983, c. 161.)

§ 47-14-10. Solicitation.

(a) Any contract seller or agent or employee or person acting in behalf of any such person may not:

(1) Directly or indirectly call upon individuals or person in hospitals, rest homes, nursing homes, or similar institutions of the purpose of soliciting preneed funeral contracts or making funeral or final disposition arrangements without first having been specifically requested by such person to do so;

(2) Directly or indirectly employ any agent, assistant, employee, independent contracting person or any other person to call upon individuals or persons in hospitals, rest homes, nursing homes or similar institutions for the purpose of soliciting preneed funeral contracts or making funeral or final disposition arrangements without first having been specifically requested by such person to do so;



(3) Solicit relatives of persons whose death is apparently pending or whose death has recently occurred for the purpose of providing funeral services, final disposition, burial or funeral goods for such person;

(4) Solicit or accept or pay any consideration for recommending or causing a dead human body to be provided funeral services and funeral and burial goods by specific persons, or the services of a specific crematory, mausoleum or cemetery except where such arrangement is the subject of a preneed funeral contract;

(5) Solicit by telephone call or by visit to a personal residence, unless such solicitation has been previously has been previously requested by the person solicited or by a family member residing at such residence.

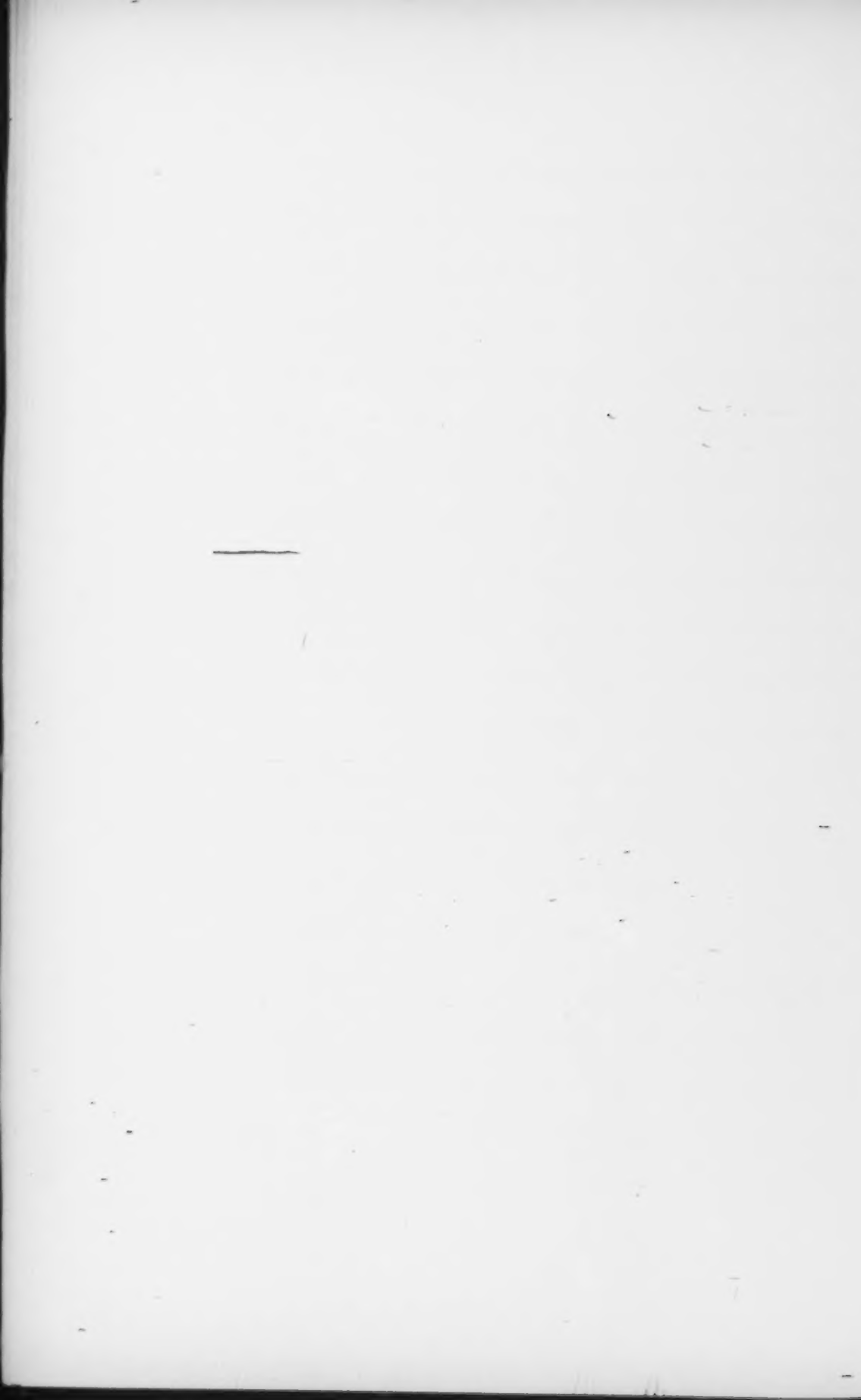


(b) Notwithstanding any other provision of law to the contrary, nothing in this article shall be construed to restrict the right of a person to lawfully advertise, to use direct mail or otherwise communicate in a manner not within the above prohibition of solicitation or to solicit the business of anyone responding to such communication or otherwise initiating discussion of the goods or services being offered.

(c) Nothing herein shall be construed to prohibit general advertising.

(d) Anyone making a personal or written solicitation for a preneed funeral contract shall, at the very first instance, divulge the real reason for the contract or solicitation.

(e) The department may adopt rules regulating the solicitation of preneed contracts by certificate holders or



registrants to protect the public from solicitation practices which utilize undue influence or which take undue advantage of a person's ignorance or emotional vulnerability. (1983, c. 161.)

**§ 47-14-11. Disciplinary proceedings;
revocation of license or certificate;
liquidation upon violation.**

(a) The following acts constitute grounds for which the disciplinary actions in subsection (b) may be taken against any person holding a certificate of authority or license pursuant to this article:

(1) Violating any provisions of this article;

(2) Attempting to procure or procuring a certificate of authority or license under this article by bribery or fraudulent misrepresentation;



(3) Having had any certificate of authority or license to sell preneed funeral contracts revoked, suspended or otherwise acted against, including denial of licensure, by a licensing authority of another jurisdiction;

(4) Being convicted or found guilty of a crime in any jurisdiction which directly relates to the sale of preneed funeral contracts;

(5) Making or filing a report required by this article which the certificate holder knows to be false or knowingly failing to make or file a report required by this article;

(6) Advertising goods or services in a manner which is fraudulent, false, deceptive or misleading in form or content;

(7) Engaging in fraud, deceit or misrepresentation in the conduct of business of the certificate holder;

(8) Failing to comply with a lawful order of the department;

(9) Knowingly making any false or misleading statement, oral or written, directly or indirectly, regarding the sale of services or merchandise in connection with the conduct of the certificate holder's business;

(10) Not maintaining the funds received under the contracts as required by this article;

(11) Failing to cancel a preneed funeral contract upon proper request and refund that portion of the amount paid on such a contract as required by this article;

(12) Failing to renew or qualify for renewal of its certificate of authority or license;



(13) Failing to produce records in connection with the certificate holder's business or has otherwise failed to comply with the provisions of this article or any rule promulgated by the department pursuant to this article; or

(14) Soliciting by the certificate holder, its agents, employees or representatives through the use of fraud, undue influence, misrepresentation or over-reaching or other forms of vexatious conduct as defined by law, this article or the rules and regulations of the department a to preneed funeral contracts.

(b) Upon the violation of any of the provisions of this article, determined in an administrative hearing after notice and an opportunity to be heard, the department may institute revocation proceedings regarding a license to operate a funeral home or a certificate of authority to sell preneed



funeral contracts, or both the license and the certificate of authority or file a complaint in a court of competent jurisdiction setting forth the relevant facts and praying for the issuance of an order to show cause why the license to operate a funeral home or the certificate of authority to sell preneed funeral contracts, or both the license and the certificate should not be revoked.

(1) Upon application for such rule to show cause, the court may, in its discretion, issue an injunction restraining the defendant from transacting further business until further order of the court.

(2) Upon return of such order to show cause, the court shall hear and try the issue forthwith. If the court determines that the person so charged as defendant in such



proceeding has not been guilty of the omission, failure or violation alleged in the complaint by the department, the court shall dismiss such complaint. If the court finds that the charges of the department are supported by the evidence, it may enter an order directly the revocation of a license to operate a funeral home or of a certificate of authority to sell preneed funeral contracts, or the revocation of both the license and the certificate of authority.

(3) In any such order of liquidation or in any order or orders thereafter entered, the court shall provide a notice to creditors, filing of claims and all other details necessary and essential to an estate in receivership.

(c) When the department finds any certificate holder or licensee guilty of any



of the acts set forth in subsection (a) of this section after an administrative hearing, or finds that any funeral services or funeral or burial goods are offered for sale when the offer is not a bona fide offer to sell such services or goods, it may enter an order imposing one or more of the following penalties:

(1) Denial of an application for a certificate of authority or license, including a renewal;

(2) Revocation or suspension of a certificate of authority or license;

(3) Imposition of an administrative fine not to exceed one thousand dollars for each count where there are separate violations;

(4) Issuance of a reprimand; or

(5) Placement of the licensee or certificate holder on probation for a period of time and subject to such conditions as the department may specify.



(d) All preneed funeral contract buyers have a priority in claims against the provider, to the extent that their interest is set forth in this article.

(e) For purposes of this section, the acts or omissions of any person employed by or under contract to or on behalf of the certificate holder shall be treated as acts or omissions of the certificate holder.

(f) Subject to the provisions of subsection (b), section seven {§ 47-14-7(b)} of this article, all prices or quotations of prices contained in any preneed funeral contract shall be fully and clearly stated.
(1983, c. 161.)

**§ 47-14-12. Civil action;
attorney's fees.**

(a) The failure of a certificate holder or licensee to comply with the provisions of this article gives rise to a civil cause of



action in favor of any aggrieved consumer or contract purchaser. Upon entry of a judgment for damages in favor of the plaintiff, the trial court shall award punitive damages in the amount of three times the actual damages awarded in the judgment.

(b) The prevailing party, after judgment in trial court and exhaustion of all appeals, if any, shall receive reasonable attorney's fees and costs from the nonprevailing party.

(c) The attorney for the prevailing party shall submit a sworn affidavit of his time spent on the case and his costs incurred for all the motions, hearings and appeals to the trial judge who presided over the civil case.

(d) The trial judge shall award the prevailing party the sum of reasonable costs incurred in the action, plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.



(e) Any award of attorney's fees or costs shall become part of the judgment and subject to execution as the law allows. (1983, c. 161.)

§ 47-14-13. Penalty.

Any person who receives, holds, manages or controls any funds or proceeds realized from the writing and issuing of a preneed funeral contract or disburses such funds or proceeds in any manner other than as authorized or required by this article or who has violated any of the provisions of this article or the rules and regulations promulgated hereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than one thousand dollars for each occurrence, or imprisoned in the county jail for a term not to exceed one year or both fined and imprisoned. (1955, c. 153; 1965, c. 145; 1983, c. 161.)



§ 47-14-14. Severability.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such invalidation shall not affect the validity of the remaining portions of this article, and, to this end, the provisions of this article are hereby declared to be severable. (1955, c. 153; 1965, c. 145; 1983, c. 161.)